



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**DEREK SCHMIDT**  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.AG.KS.GOV

September 21, 2021

Honorable Laura Kelly  
State Capitol, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

Dear Governor Kelly:

Over the past eight months, the federal government has abandoned or reversed numerous policies that promoted a secure southern border, resulting in a surge of persons attempting to illegally enter the United States and overwhelming U.S. border security. In July alone, the number of people illegally crossing America's southern border reached its highest level in more than two decades, with 212,672 taken into custody,<sup>1</sup> and the 208,887 encounters in August remained at record levels.<sup>2</sup> These shocking numbers do not account for the many more who eluded detention and are now free to move throughout our country. This crisis at America's southern border presents real and present public safety risks for states, including Kansas. Violence in Kansas communities is fueled by the shipment of illegal drugs across the border, while gangs and trans-national criminal organizations are more easily able to integrate their operations in the United States with those south of the border.

When the federal government fails to secure the border, it becomes critically important that criminal activity entering the United States be intercepted and contained as close to the border as possible so as to minimize its reach into Kansas. In recent years, persons illegally present in the United States have been convicted of numerous violent state crimes in Kansas, including murder, attempted murder and sex crimes against children as well as identity thefts and other crimes. There can be no question it is in the interest of public safety in our Kansas communities that the border be secured and that criminal activity enabled by illegal border crossings be contained as far from Kansas as possible.

On June 10, 2021, the governors of Texas and Arizona wrote to you and requested under authority of the Emergency Management Assistance Compact ("the Compact"), to which Kansas is a party, that Kansas send "all available law-enforcement resources to the border in defense of our sovereignty and territorial integrity."<sup>3</sup> Assistance sent under the Compact would help intercept and contain criminal activity as close to the border as possible by enforcing criminal violations of state and federal law in Arizona and Texas, which is an appropriate and lawful use of state law enforcement resources.<sup>4</sup>

---

<sup>1</sup> "July was busiest month for illegal border crossings in 21 years, CBP data shows," *Washington Post*, August 12, 2021 (available at [https://www.washingtonpost.com/national/record-numbers-illegal-border-crossings/2021/08/12/e3d305e2-facd-11eb-b8dd-0e376fba55f2\\_story.html](https://www.washingtonpost.com/national/record-numbers-illegal-border-crossings/2021/08/12/e3d305e2-facd-11eb-b8dd-0e376fba55f2_story.html)) (last accessed September 17, 2021).

<sup>2</sup> "Border authorities stopped more than 200,000 migrants in August for second consecutive month, data shows," *Washington Post*, September 14, 2021 (available at [https://www.washingtonpost.com/national/border-authorities-stopped-more-than-200000-migrants-in-august-for-second-consecutive-month-data-show/2021/09/15/69072f70-163c-11ec-ae9a-9c36751cf799\\_story.html](https://www.washingtonpost.com/national/border-authorities-stopped-more-than-200000-migrants-in-august-for-second-consecutive-month-data-show/2021/09/15/69072f70-163c-11ec-ae9a-9c36751cf799_story.html)) (last accessed September 17, 2021).

<sup>3</sup> Letter from Governor Greg Abbott and Governor Douglas Ducey to all fellow governors, June 10, 2021. A copy is attached.

<sup>4</sup> In a case arising in Kansas that was argued personally by Attorney General Schmidt in 2019, the United States Supreme Court made clear that states retain authority to enforce their generally applicable criminal laws even against persons who are illegally present in the United States. See *Kansas v. Garcia*, 140 S. Ct. 791 (2020).

On June 25, 2021, members of our Kansas congressional delegation wrote to encourage you to respond favorably to the request from Texas and Arizona.<sup>5</sup> We were disappointed by news reports at the time indicating you dismissed this matter as “political games.”<sup>6</sup> With the crisis on the southern border continuing to grow, we remain concerned by your continued lack of action in response to the pending request for assistance from Texas and Arizona.

At least half a dozen other states have responded to the Texas and Arizona requests by sending law enforcement assistance, such as from their National Guard or Highway Patrol.<sup>7</sup> The responding states include Iowa, Nebraska and South Dakota. Of course, much of the criminal activity enabled by the unsecured border must pass through Kansas before it reaches those three states to our north – yet, they have responded to assist Texas or Arizona while Kansas has not.

We encourage you to invoke the Compact to send law enforcement assistance to our border-state neighbors without further delay. The cost should be relatively low – public reports from other states suggest costs ranging from about \$50,000<sup>8</sup> to about \$200,000<sup>9</sup> – and the Compact provides that whatever cost Kansas may incur may be reimbursed, at least in part, by the requesting states. In any event, Kansas currently has funds available, and in light of recent reports of significant numbers of persons who have illegally entered the country testing positive for COVID,<sup>10</sup> it should be considered whether some modest amount of federal COVID relief funds could be used to address this urgent public safety and public health need, thereby avoiding all cost to state taxpayers.

As the state’s chief law enforcement official and leaders of the Kansas Legislature, we do not think this situation is a “political game[.]” We encourage you to respond urgently and favorably to the Texas and Arizona request that Kansas assist them in addressing the public safety crisis caused by the federal government’s failure to secure our southern border. It is prudent to help the border states stop transnational criminals before they reach Kansas and can cause harm in our communities and to our citizens.

We stand ready to support such a response, and we appreciate your attention to our request.

Sincerely,



Derek Schmidt  
Kansas Attorney General



Ty Masterson  
Senate President



Ron Ryckman  
Speaker of the House

<sup>5</sup> Letter from Rep. Ron Estes, Rep. Jake LaTurner, and Rep. Tracey Mann to Gov. Laura Kelly, June 25, 2021 (available at <https://estes.house.gov/uploadedfiles/estes-border-resources-letter.pdf>) (last accessed September 17, 2021)

<sup>6</sup> “GOP congressmen assail Kansas governor over border security,” Associated Press, June 30, 2021 (available at <https://apnews.com/article/joe-biden-ks-state-wire-kansas-immigration-border-security-dbc12a85c7d817ff065cb28cd1c43970>) (last accessed September 17, 2021)

<sup>7</sup> See “Ohio makes it six states sending military and police to respond to Biden border crisis,” *yahoo!*, July 7, 2021 (available at <https://www.yahoo.com/now/ohio-makes-six-states-sending-134800697.html>) (last accessed September 17, 2021)

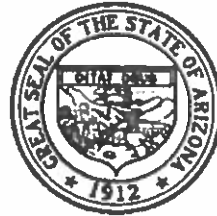
<sup>8</sup> See “Idaho will send 5 troopers to help Arizona secure border,” Associated Press, July 1, 2021 (available at <https://apnews.com/article/joe-biden-idaho-arizona-government-and-politics-0bd8ee3de13aa8e246fac59d01a730e1>) (last accessed September 17, 2021).

<sup>9</sup> See “Iowa to pay \$200,000 cost of sending troopers to Texas,” Associated Press, July 28, 2021 (available at <https://apnews.com/article/joe-biden-texas-iowa-7ea34536ac82ce0810e7bc7b079c1101>) (last accessed September 17, 2021)

<sup>10</sup> See “18 percent of migrant families leaving Border Patrol custody tested positive for Covid, document says,” *NBC News*, August 7, 2021 (available at <https://www.nbcnews.com/politics/immigration/18-percent-migrant-families-leaving-border-patrol-custody-tested-positive-n1276244>) (last accessed September 17, 2021)



GOVERNOR  
GREG ABBOTT



GOVERNOR  
DOUG DUCEY

June 10, 2021

Dear Fellow Governors:

We write to you regarding our existing Emergency Management Assistance Compact, which empowers our States to help one another in times of *disaster* or *emergency*. Those two words aptly describe the current crisis at America's southern border. On behalf of Texas and Arizona, we respectfully but urgently request that you send all available law-enforcement resources to the border in defense of our sovereignty and territorial integrity.

Securing our border with Mexico is the federal government's responsibility. But the Biden Administration has proven unwilling or unable to do the job. This failure to enforce federal immigration laws causes banns that spill over into *every State*. The cartels will see to it that their deadly fentanyl and human-trafficking victims reach far and wide. The convicted criminals they smuggle into the homeland will bring recidivism with them to far too many of your communities. And although people are now coming to our border from as far away as Senegal, Bangladesh, and Uzbekistan, the cartels are not exactly screening for threats to public health or national security.

Of course, border states like Texas and Arizona are "ground zero" for this crisis and bear a disproportionate share of these burdens. For example, Texas has spent roughly \$3.5 billion since 2014 to help secure the border and protect public safety. Since President Biden took office, Governor Abbott has deployed to the border a thousand troopers from the Texas Department of Public Safety, along with hundreds of soldiers from the Texas National Guard. Governor Ducey has taken similar action, deploying hundreds of soldiers from the Arizona National Guard to the border, and utilizing troopers from the Arizona Department of Public Safety and other law-enforcement partners as part of the Arizona Border Strike Force. Since its inception, the Arizona Border Strike Force has intercepted 284 pounds of fentanyl, which represents tens of millions of lethal doses that will never reach your streets, along with numerous illegal firearms and tens of thousands of pounds of other drugs.

In response to the ongoing surge of illegal border crossings, with the accompanying threats to private property and to the safety of our citizens, Governor Abbott has declared a disaster and Governor Ducey has declared an emergency. Among other legal consequences, these gubernatorial declarations allow our States to call in reinforcements under the Emergency Management Assistance Compact. *See* TEX. HEALTH & SAFETY CODE § 778.001 (enacting the Compact); ARIZ. REV. STAT. § 26-402 (same). Congress consented to the Compact on the heels of enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. *See* Pub.

L. 104-321. With this consent, the terms of the Compact were "transform[ed] . . . into federal law," to be enforced by the States themselves. *Cuyler v. Adams*, 449 U.S. 433,440 (1981).

Article I of the Compact "provide[s] for mutual assistance between the [States] in managing any emergency or disaster that is duly declared by the governor of the affected [States], whether arising from natural disaster, . . . community disorders, insurgency, or enemy attack." When it comes to the Biden Administration's open-border disaster, our greatest need is for additional law-enforcement personnel and equipment. Pursuant to Article IV, therefore, any officers you can send to Texas or Arizona will be afforded "the same powers . . . , duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services."

Crucially, this will include the power to arrest migrants who illegally cross the border into our territory. Many of these crossings involve state-law crimes, such as criminal trespassing or smuggling of persons. *See, e.g.*, TEX. PENAL CODE §§ 20.01, 30.05; ARIZ. REV. STAT. § 13-1502; *see also* TEX. PENAL CODE § 12.50 (increasing punishment for criminal trespass in a disaster area). And most of them entail federal-law crimes, too, including illegal entry and illegal reentry. As the U.S. Department of Justice opined in 1996—the same year the Compact won congressional consent—"state and local police may constitutionally detain or arrest aliens for violating the criminal provisions of the Immigration and Naturalization Act." 20 Op.0.L.C. 26.

Given the staggering number of violations now occurring in Texas and Arizona, additional manpower is needed from any State that can spare it. With your help, we can apprehend more of these perpetrators of state and federal crimes, before they can cause problems in your State. As required by Article 11l(B) of the Compact, authorized representatives from Texas and Arizona will be contacting their counterparts in your State to prepare an appropriately detailed request for law-enforcement assistance. Texas and Arizona have stepped up to secure the border in the federal government's absence, and now the Emergency Management Assistance Compact gives your State a chance to stand strong with us.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott". The signature is fluid and cursive, with a long horizontal stroke at the end.

Greg Abbott  
Governor of Texas

A handwritten signature in black ink, appearing to read "Douglas A. Ducey". The signature is cursive and somewhat stylized, with a prominent "D" and "A".

Douglas A. Ducey  
Governor of Arizona